THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.27122 OF 2005

DATED:21.12.2005

Between:

Mohd. Yousuf and another

…Petitioners

And

The Assistant City Planner,

Circle No.1, Sardarmahal,

Charminar, Municipal Corporation of Hyderabad

Hyderabad and others

…Respondents

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ORDER:

The petitioners are occupants of mulgies/shops bearing Nos.16-1-487/2/5 and 16/1/487/2/2 situated at Syedabad Road, Hyderabad. They are tenants of the third respondent. They alleged that when the petitioners refused to vacate the premises, the third respondent approached the first respondent and gave consent for demolition of the shops ostensibly for road widening and thereafter respondents 1 and 2 threatened to demolish the petitioners' shops if they failed to vacate by 25.12.2005. Therefore, petitioners filed the present Writ Petition.

Learned counsel for the petitioners contend that the action of the respondents in trying to demolish the shops without following the procedure prescribed under

Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act) and the Land Acquisition Act, 1894 (for short, the LA Act) is illegal.

It appears that the Municipal Corporation of Hyderabad (MCH) has sought consent of the owner of the premises for advance possession in larger public interest. It does not, however, mean that in the event of tenant of the property not willing to give consent, the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Act. In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.
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> In similar circumstances, W.P.No.21341 of 2000 dated 7.11.2000 and W.P.No.22216 of 2000 dated 16.11.2000 were disposed of by me with direction to respondent –Corporation to take necessary action as per the Land Acquisition Act or the HMC Act, if the landlords are not willing to give their consent. I also directed that if the consent is already given by the landlord/owner, the MCH shall be at liberty to proceed with further action for widening the road. In view of the judgment of the Full Bench in M/s.Ushodaya Publications v. Commissioner, Municipal Corporation of Hyderabad the MCH has to obtain consent even from the tenants without which the road widening work cannot be taken up unless MCH takes action for acquisition of land as per law. Needless to mention that unless proper procedure is contemplated and initiated, the MCH, in law, is not entitled to either forcibly take possession or demolish the structures in the area.

In this case, the petitioners were allegedly not issued any notice seeking willingness/consent to give advance possession to MCH for the road widening project. After issuing notice by the MCH, if the petitioners are not willing to give consent to give advance possession, needless to mention that Corporation has to initiate action under the provisions of the LA Act. Till then, the petitioners cannot be deprived of their right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The Writ Petition with the above observations is accordingly disposed of. No costs.

(V.V.S.RAO, J)

21.12.2005

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